ORIGINAL

Case No. 83-6097

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1983

ROGER KEITH COLEMAN

Petitioner

v.

COMMONWEALTH OF VIRGINIA

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF VIRGINIA

Petition For A Writ Of Certiorari

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83-6097

QUESTION PRESENTED

Did the trial court's action in refusing to order a change of venue of Petitioner's trial on charges of capital murder and rape, when evidence showed that information about the crime and the Petitioner was widely disseminated in the community and that there was widespread and intense community hostility toward him, deny Petitioner his right to trial by an impartial jury in violation of the Sixth and Fourteenth Amendments to the United States Constitution?

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QUESTION PRESENTED

Did the trial court's action in refusing to order a change of venue of Petitioner's trial on charges of capital murder and rape, when evidence showed that information about the crime and the Petitioner was widely disseminated in the community and that there was widespread and intense community hostility toward him, deny Petitioner his right to trial by an impartial jury in violation of the Sixth and Fourteenth Amendments to the United States Constitution?

PROCEEDINGS BELOW AND JURISDICTION

A jury convicted the Petitioner of capital murder and rape on March 18, 1982, following his trial in the Circuit Court of Buchanan County, Virginia. The jury sentenced him to life imprisonment on the rape charge. After hearing evidence regarding the sentence on the capital murder charge on March 19, 1982, the jury recommended the death penalty. In accordance with the jury's recommendation, the death sentence was ordered for the Petitioner by the Honorable Nicholas E. Persin, Judge of the Buchanan County Circuit Court, on April 23, 1982. (R., at 200-207.)[1]

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[1] Citations given as "R." are to the record in the court below as published in the appendix submitted to the Supreme Court of Virginia. Citations to events at Petitoner's trial are given to the actual transcript, and are given as "Tr." Citations to "App." refer to pages in the Appendix to this Petition.

The Petitioner appealed his convictions to the Supreme Court of Virginia, which issued a decision affirming the actions of the Circuit Court on September 9, 1983. Coleman v. Commonwealth, 226 Va. --, 226 V.R.R. 29 (1983). (App., at 1-30.) Petitioner filed a timely request for a rehearing, which request was denied on October 14, 1983. (App., at 31.) By Order dated November 28, 1983, Chief Justice Warren E. Burger extended the time within which Petitioner was required to file his Petition for a Writ of Certiorari to January 14, 1984.

This Court has jurisdiction to review the decision of the Supreme Court of Virginia in this matter pursuant to 28 U.S.C. §1257(3), in that the Petitioner alleges a violation of his right to trial by an impartial jury as guaranteed by the Sixth and Fourteenth Amendments to the United States Constition.

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution states, in pertinent part, as follows:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury....

The Fourteenth Amendment to the United States Consitution states, in pertinent part, as follows:

> No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law....

STATEMENT OF THE CASE

Mrs. Wanda Fay McCoy, a resident of Grundy, Virginia, was killed on the evening of March 10, 1981. Her throat was cut, and she was stabbed twice in the chest. Evidence of semen was found in her vagina. According to the evidence at trial, Mrs. McCoy's body was found by her husband when he returned home from work that evening.

In the words of one of the prosecutors, Thomas R. Scott, this "probably is the worst thing that's happened in this county and in this town in a long time." (Tr. at 868.) News of this crime spread rapidly throughout Grundy and surrounding Buchanan County, a rural and thinly populated area. As the local newspaper, The Virginia Mountaineer, stated on its front page, "The killing of Mrs. McCoy created an uneasy tension throughout the community." (App. at 33.)

On April 13, 1981, more than a month following the crime, the Petitioner, Roger Keith Coleman, was arrested and charged with rape and capital murder. Coleman was linked with the scene of the crime by laboratory evidence. His blood type was consistent with the blood grouping of the semen which was found, and two of his hairs were consistent with hairs which were found at the scene. Mrs. McCoy was previously acquainted with Coleman, since he had married one of her sisters. He and his wife lived hear the McCoys, and evidence indicated he could have been in the area at the time of the murder. No one saw Coleman at the scene, and the evidence against him was circumstantial.

There were strong feelings against the Petitioner in Buchanan County. In December, 1981, following threats against him, the Petitioner was ordered transferred from Buchanan County to the Bristol City Jail, pending his trial, which was scheduled for the following March. (R. at 123-25.) In early 1982, a large

sign appeared at the service station in Grundy saying "Time for another hanging in Grundy." The court reached to Tazewell, Virginia, in the county adjoining Buchanan County, for one of the attorneys who was appointed to represent the Petitioner. Even the course of Petitioner's trial was affected. At the conclusion of the evidence, the judge ordered the jury room checked by the sheriff, and then he personally checked it himself, before allowing the jury to retire to consider its verdict. (Tr. at 930.) Before allowing the jury into the courtroom to announce its verdict, the judge had all the spectators searched. (Tr. at 932.) The judge also had the jury room checked before the jury retired to consider whether to recommend the death penalty following the sentencing portion of the trial. (Tr. at 1036.) He did this because "We have had some threats made." (Tr. at 932.)

The Petitioner's attorneys filed a Motion for a Change of Venue "on the grounds that there exists in Buchanan County, Virginia, so great a prejudice against the [Petitioner] that he cannot obtain a fair and impartial trial." (App. at 32.) This motion was denied by order of the court dated January 5, 1982. (App. at 37.) The motion was renewed at the beginning of Petitioner's trial in March, 1982, and again denied. (Tr. at 36-40.) The court proceeded to pick the jury. Of 42 veniremen called, one-third were excused because they stated they had formed an opinion regarding the merits of the case. (App. at 15.) All but two of the members of the final jury indicated that they had read about the case or heard it discussed prior to the trial. As one juror stated, "I think most people have in the county, you know, talked about it." (Tr. at 51.)

Following his trial, the Petitioner was found guilty by the jury of capital murder and rape. Following the sentencing portion of the trial, the jury recommended the death penalty, and

this penalty was concurred in by the judge. (R. at 200-207.)

The Petitioner appealed his convictions and sentence to the Supreme Court of Virginia, alleging as one of his grounds that the trial court erred in failing to grant his motion for a change of venue. The court considered and rejected this contention in its decision of September 9, 1983, affirming the convictions and sentence. (App. at 14-16.)

ARGUMENT

The Due Process Clause of the Fourteenth Amendment includes within its protections a defendant's Sixth Amendment right to be tried by "a panel of impartial, 'indifferent' jurors." Irvin v. Dowd, 366 U.S. 717, 722 (1961); Coleman v. Zant, 708 F.2d 541, 544 (11th Cir. 1983). When an inflamed community atmosphere precludes seating an impartial jury, due process requires the trial court to grant a defendant's motion for a change of venue. Id.; Rideau v. Louisiana, 373 U.S. 723, 726 (1963).

There can be no question in the present case that the community atmosphere in Buchanan County, Virginia, was inflamed with anger and outrage directed at the Petitioner. The threats against him forced the trial judge to order him held in the jail of a neighboring community, lest he come to harm while waiting for trial. (Record, at 119, 123-25.) During the trial itself, the judge ordered the spectators searched and felt called on to personally search the jury room before permitting the jury to retire there. (Tr. at 930-33.) The large sign posted at the town service station prior to the Petitioner's trial obviously spoke for many in this community: "Time for another hanging in Grundy." (R., at 124.)

The question, then, is whether this community atmosphere made it impossible to guarantee the Petitioner a trial by a fair, impartial and "indifferent" jury. Irvin, supra. This question has two parts. First, the court should inquire whether there was actual bias on the part of any of the jurors. This would be shown, for example, where a member of the jury stated that he had formed an opinion about the outcome of the case and that he was not able to set this opinion aside and evaluate the case based on the evidence presented in court. Irvin, supra. This is not the case here. In this case, each of the members of the jury denied having formed any opinions about the case.

The second part to this question requires the court to ask whether, despite the assurances of the jury members, there is reason to believe that the community atmosphere was so inflammatory that the jury members could not avoid being affected by it. Rideau, supra. Most cases where jury bias has been presumed to follow from community atmosphere involve extensive publicity of circumstances of the case. Irvin, supra; Rideau, supra; Sheppard v. Maxwell, 384 U.S. 333 (1966); Yount v. Patton, 710 F.2d 956 (3rd Cir. 1983), cert. granted, Case No. 83-95, 52 U.S.L.W. 3309 (October 17, 1983). Other factors also may be considered, however, such as the notariety of the defendant in the community where the trial is to be held, Johnson v. Beto, 337 F.Supp. 1371 (S.D.Tex. 1972), or the emotional impact of a stunning crime on a rural community, Manning v. State, 378 So.2d 274 (Fla. 1979); Pamplin v. Mason, 364 F.2d 1 (5th Cir. 1966). Each case must be assessed on its own facts to determine whether the trial was "fundamentally fair." Murphy v. Florida, 421 U.S. 794, 799 (1975).

In Petitioner's case, the record clearly shows

prejudicial pre-trial publicity. In a front-page story in the Buchanan County newspaper, The Virginia Mountaineer, of April 16, 1981, the Petitioner's arrest and the charges against him are described. (App. at 33.) The article also describes in detail a totally unrelated charge of indecent exposure, quoting the indictment as charging that he "did expose his genitals and masturbate while in the Buchanan County Public Library while others were present" on January 12, 1981, two months before the murder. An article in the following week's Mountaineer, dated April 23, 1981, lists the Petitioner's previous convictions, one for attempted rape and two for making obscene telephone calls. (App. at 34.) This article states that the Petitioner's application for bond was denied because "his liberty would constitute an unreasonable danger to the public." These and other articles were submitted in connection with the Petitioner's motion for a change of venue. (App. at 32-36.)

Although the number of articles offered by the Petitioner is smaller than that in other cases, e.g., Commonwealth v. Cohen, 413 A.2d 1066 (Pa. 1980); People v. Botham, 629 P.2d 589 (Colo. 1981), the prejudicial nature of the information contained in these articles is clear. This information was obviously not admissible at the Petitioner's trial, but it was nevertheless made available to the members of his community. The information regarding the indecent exposure charge is particularly troubling. The record does not reflect the disposition of this charge, but it was not one of the charges against Petitioner at his trial (R. at 200), and the prosecution made no mention of this allegation at either the guilt or the sentencing portion of Petitioner's trial.

The publication of prejudicial information, by itself, would not of course ordinarily require a change of venue. But the combination of the publicity, the nature of the crime, and

the nature of the community in which it occurred is a dangerous mixture from the point of view of protecting the Petitioner's rights. It must be stressed that this was a shocking crime committed in a rural community. The victim's youth, the sexual nature of the crime, and the brutality of the killing all inflamed the Buchanan County community. The Mountaineer stated on April 14, 1981, that "The killing of Mrs. McCoy created an uneasy tension throughout the community...a number of measures for increased personal safety have been in evidence in the local area during recent weeks. The case is the first in which a person has been attacked and killed at a Grundy residence in a number of years." (App. at 33.)

The interest of the community in the case was noted time and again during the voir dire of the prospective jurors. (Tr. at 9 - 281.) Mrs. Gladys Davis, who became a juror, stated during voir dire, in answer to a question whether she had ever heard anyone discuss the case, that "Well, yes, I think most people have in the county, you know, talked about it." (Tr. at 51.) McClellan Ratliff, another prospective juror, stated in answer to a similar question "I've heard talk. I don't think there's anybody in Buchanan County that hasn't heard some talk." (Tr. at 76.) During cross-examination of Randall Jackson, Grundy Chief of Police, the following exchange took place:

> Q. During the course of -- this was a pretty spectacular thing, wasn't it, Mr. Jackson?
>
> A. Yes, sir.
>
> Q. During the course of this investigation, were there a lot of rumors going around?
>
> A. There were rumors, yes, sir.
>
> Q. All sorts of information being passed around in the community?
>
> A. Rumors.

(Tr. at 845-46.) As the Supreme Court of Virginia noted in its opinion in this matter, one-third of the prospective jurors had to be excused, because they had already formed an opinion about the Petitoner's guilt. (App. at 15.) Of the twelve jurors ultimately selected to hear the case, ten stated that they had seen the newspaper articles about the case and/or participated in discussions with people about the case prior to the trial.

The community atmosphere regarding this case was affected by factors other than just the publicity and the shocking nature of the crime. There were, in addition, death threats made against the Petitioner. These threats were made while the Petitioner was waiting for trial and even during the trial itself. On December 9, 1981, on the motion of the Commonwealth's Attorney, the trial judge ordered the Petitioner transferred to the Bristol City Jail for his safety. (R., 119, 123-25.) On February 15, 1982, the Petitioner wrote personally to the trial judge asking that his trial be moved, citing the community atmosphere and the threats to his safety. (R., 123-25.) He described a sign which had been put up at the service station in Grundy saying "Time for another hanging in Grundy."

It was in this context that the Petitioner's trial was held, over his objection, in Grundy. At the conclusion of the evidence, before permitting the jury to retire to consider its verdict, the trial judge ordered the sheriff to search the jury room. (Tr. at 930.) After the sheriff did this, the trial judge then withdrew from the court to inspect the jury room personally. (Id.) Only then did he permit the jury to withdraw. The jury room was searched before the jury was permitted to return to it following their supper break. (Tr. at 932.) Then, before allowing the jury to return to the courtroom to deliver their verdict, the judge ordered all spectators to leave the courtroom

so that they could be searched before being let back in. (Tr. at 932-33.) The judge stated that this was necessary because "We have had some threats made." (Tr. at 932.)

It was in this setting that the jury retired to consider their verdict, and it was in this setting that the jury came into the courtroom on the evening of March 18, 1982, and announced that they had found the Petitioner guilty of rape and capital murder.

The following day, March 19, 1982, was spent taking evidence on the question whether the Petitioner should be sentenced to the death penalty or to life imprisonment on the conviction of capital murder. Again, the judge ordered the jury room searched before he permitted the jury to withdraw. (Tr. at 1036.) The jury voted for the death penalty.

The right to an impartial jury is not, as this Court's opinions have made clear, a right to a jury of members who merely state their impartiality, and assertions of neutrality by jurors are not dispositive "in a case where the general atmosphere in the community or courtroom is sufficiently inflammatory." Murphy v. Florida, supra, 421 U.S. at 802. The defendant has a right to a jury which is actually free from outside pressures and influences, "indifferent" to the case before them as they hear and weigh the evidence. Irvin, supra. This right "is so central to due process that a trial judge must be assiduous in insuring that it has not been abridged." Aston v. Warden, Powhatan Correctional Center, 574 F.2d 1169, 1172 (4th Cir. 1978).

The Supreme Court of Virginia based its decision upholding the trial judge on the fact, without more, that the jurors had given assurances of their impartiality. (App. at 16.) As noted above, this is not enough. For a review of the problems involved in relying on juror assurances, see United States v.

Blanton, 700 F.2d 298, 304-308 (6th Cir. 1983).

The failure of the Virginia Supreme Court even to inquire whether the inflammatory community context within which the trial took place required a change of venue is in flat contradiction with its obligations under the clear weight of this Court's decisions in Irvin, supra; Rideau, supra; Sheppard, supra; and Murphy, supra, and is, in addition, inconsistent with the holdings in, among others, Pamplin, supra; Yount, supra; Manning, supra; and Commonwealth v. Frazier, 369 A.2d 1224 (Pa. 1977).

As the Florida Supreme Court stated in Manning, "the general atmosphere in this rural community was sufficiently inflammatory to require the trial court to grant a change of venue." 378 So.2d 277. Had the Virginia Supreme Court made the required inquiry, it would have been forced to the same conclusion. It was not possible for the Petitioner to receive an impartial hearing before a panel of jurors drawn from Buchanan County. Only a change of venue could have adequately protected his Sixth and Fourteenth Amendment right to a trial by an impartial jury.

CONCLUSION

For the reasons stated above, Petitioner respectfully prays this Court to grant his Petition for a Writ of Certiorari to the Supreme Court of Virginia and to review his claims on the merits.

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MAILING CERTIFICATE

I, Edward M. Wayland, a member of the Bar of this Court, make oath that, on or before January 14, 1984, I caused this Petition for Writ of Certiorari, with the attached Appendix and the accompanying Motion to Proceed In Forma Pauperis with its supporting affidavit, to be deposited in a United States Post Office or mailbox, with first-class postage prepaid, and properly addressed to the Clerk of the Supreme Court of the United States, pursuant to Rule 28.2 of the Rules of the Supreme Court. I further make oath that I caused one copy of each of the above-mentioned documents to be sent to Jacqueline G. Epps, Esq., Senior Assistant Attorney General, 101 North 8th Street, Richmond, Virginia 23219, counsel for Respondent, on or before January 14, 1984, by depositing the documents in a United States Post Office or mailbox, with first-class postage prepaid.

Edward M. Wayland

State of Virginia
City of Charlottesville, to wit:

The foregoing Mailing Certificate was sworn to, subscribed and acknowledged before me, a Notary Public in and for the Commonwealth of Virginia at Large, this 14th day of January, 1984, by Edward M. Wayland.

Notary Public

My commission expires: August 10, 1984.

APPENDIX

Present: All the Justices

ROGER KEITH COLEMAN

-v- Record No. 821816

OPINION BY JUSTICE GEORGE M. COCHRAN

September 9, 1983

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF BUCHANAN COUNTY
Nicholas E. Persin, Judge

Tried by a jury under indictments charging him with the rape of Wanda Faye Thompson McCoy and with the willful, deliberate, and premeditated killing of the same victim during the commission of rape, capital murder as defined in Code § 18.2-31(e), Roger Keith Coleman was found guilty as charged. The jury fixed his punishment for rape at confinement in the penitentiary for life. In the second part of the bifurcated proceeding required by Code §§ 19.2-264.3 and -264.4 in the capital murder case, the jury fixed Coleman's sentence at death. On April 23, 1982, after considering the probation officer's report, the trial court imposed the death sentence; in the same order, the court entered judgment on the jury verdict in the rape case.[1] We have consolidated the automatic review of Coleman's death sentence with his appeal of his conviction of capital murder and have given them priority on our docket.

---

[1] Coleman filed a separate petition for appeal of the rape conviction. The petition was this day denied.

The evidence against Coleman was entirely circumstantial; it will be stated in the light most favorable to the Commonwealth. Bradley D. McCoy, 21, testified that on the date of the murder he and his wife, Wanda Faye McCoy, who was 19, lived on the outskirts of Grundy in a rented house at Long Bottom on Slate Creek. The McCoys, who had been married for two and one-half years, had no children. Wanda was not employed; her husband was a parts clerk for United Coal Company, working the second shift from 3:00 p.m. to 11:00 p.m. On March 10, 1981, at 2:15 p.m., McCoy went to work, leaving Wanda at home alone.

McCoy testified that about 9:00 p.m. he telephoned Wanda "to see if she was okay." They talked about 10 or 15 minutes, discussing among other things how they would spend an anticipated income tax refund. McCoy said he always telephoned his wife at this time, when he took a break from work, because she was "more or less afraid to stay by herself" and was "shy." She did not indicate anyone was with her and McCoy believed she would have told him "if anyone was there or had been there that day."

At the end of his shift, McCoy drove home in his car, arriving about 11:15 p.m. Although Wanda usually left the porch light on for him, no outside lights were shining when he knocked on the door; Wanda usually kept both the storm door and the wooden front door locked. Receiving no answer, McCoy opened the storm door, which was unlocked, then opened the front door with his key, and entered the living room. He saw that the coffee table had been moved, there were "slight drips of blood on the floor," and the light and the television were on. He called for Wanda but heard nothing. Going to the back bedroom, where a light was on, he found his wife lying on her back on the floor. Her hair was pulled over her face, she had a wound in her chest, and there was blood beside her head. Her arms were

stretched behind her head and her legs were lying straight out and apart. She appeared to be dead; McCoy did not touch her. He found no signs of forced entry into the house.

McCoy telephoned his father, Max McCoy, known as Hezzie, who lived 400 to 500 yards away, and told him that Wanda had been killed. McCoy turned on the porch light, initially waited for his father, but after a few minutes ran to meet him. After Hezzie called the sheriff's office at 11:21 p.m., McCoy and his father returned to McCoy's house, looked at the body but did not touch it, and met the police officers who began to arrive.

McCoy said that Coleman's wife was a younger sister of Wanda's, that the Colemans lived in the home of Coleman's grandmother, which was a five-minute walk from the McCoy house, and that on the night before Wanda's death the Colemans stopped by the McCoys' but only Coleman's wife came into the house.

Sergeant Steven D. Coleman, of the Buchanan County Sheriff's Department, arrived about 11:25 p.m. accompanied by another officer. He tried to check Wanda's neck for a pulse but found it "so badly torn up" that he could not do so. There was a large gaping hole in the front of her neck; a pool of blood was around her head.

Other local and state law enforcement officers promptly came to the McCoy house to assist in the investigation. Randall S. Jackson, Chief of Police for the Town of Grundy, arrived about 11:27 p.m. He observed what appeared to be bloodstains on the floor and wall of the living room, and "tracks of blood, where something had been dragged" through the hallway and into the bedroom in which he found Wanda's body. Jackson felt her wrist, which was "very warm," but found no pulse. He sent an officer for Dr. Thomas D. McDonald, the medical examiner, and arranged to secure the premises. At daybreak, Jackson measured

the depth of Slate Creek, located 75 to 100 yards from the McCoy house, at 10 to 12 inches.

Dr. McDonald, who lived nearby, arrived at 11:35 p.m. He made a superficial examination of Wanda, confirmed that she was dead, but did not move her pending the arrival of a State Police special investigating unit. Wanda was lying on her back, partially clothed, with her panties around her left ankle, arms over her head, and legs extended. She had a large laceration of the neck and two puncture wounds in her chest. Dr. McDonald determined that the cause of death was the "slashing wound to the throat." The body was still warm, rigor mortis had not set in, and Dr. McDonald estimated that Wanda had died about 10:30 p.m., or within 30 minutes before or after that time.

A neighbor testified that when she took the trash out of her house about 10:30 p.m. she saw the porch light burning at the McCoy residence.

The Commonwealth offered color photographs showing the scene of the crime and different views of the victim's body. Over Coleman's objection, the trial court admitted 14 of the photographs after excluding two as repetitious and one as inflammatory.

The victim's body was removed to Roanoke where Dr. David W. Oxley performed an autopsy on March 12. Dr. Oxley testified that death was caused by a "slash wound" of the throat with cutting of the "right carotid artery, jugular vein and larynx." He also found two stab wounds in the chest. One, measuring 1-1/4 inch by 1/16 inch, with a depth of 4 inches, had penetrated the heart and lung. Because there was little or no hemorrhaging from this wound Dr. Oxley concluded it had been inflicted after death. The other, measuring 1-3/4 inch by 1/16 inch, also with a depth of 4 inches, had penetrated the liver; Dr. Oxley was of opinion that this wound was inflicted after death or close to

the time of death. He described the neck wound as a single cut, two to three inches in depth without "hesitation marks," leading from the right side of the neck to the left and downward.

Dr. Oxley found two foreign hairs in the victim's genital area. He submitted these, samples of her pubic hairs, blood, swabs from her mouth, hands, vagina, and rectum, and the panties found wrapped around her left foot, to Elmer Gist, Jr., a forensic scientist.

Out of the presence of the jury, the trial court conducted a hearing on the admissibility of statements made by Coleman on March 11 and 12 to Jack E. Davidson, Special Agent with the Virginia State Police, one of the investigating officers. Davidson testified there were several suspects, including Coleman, whose activities police were "exploring at that particular time." He and another officer went to Coleman's grandmother's residence on March 11 and asked Coleman "if it was all right, if he could talk to us." According to Davidson, Coleman said "sure," and the interview was conducted, beginning at 12:32 p.m., as the two sat in Davidson's car; the other officer remained at the house.

Davidson explained that he did not give Coleman Miranda warnings because the suspect was "not in an accusatory status" but was "in an investigative status." Davidson said Coleman was not under arrest and was free to go at any time. The officer was unable to record his interview because of a malfunction of the equipment, but he made notes of Coleman's statement. Coleman was a coal miner, employed by T J and M Coal Company. His statement was exculpatory, purporting to account in detail for his time on the night of the killing. Thus, he said he left his home at 8:30 p.m., left the Speedy Market at 9:05 p.m., went to other listed places at specified times before

and after finding that his shift at the mine had been terminated and arrived at 10:50 p.m. at the bathhouse in town where he took a shower and changed his clothes before returning home.

When Davidson asked Coleman for the clothes he wore that night, Coleman turned over to him a plastic bag of clothing and a knife. In the bag was a pair of dirty blue jeans; the bottom 10 to 12 inches of each pants leg were wet. Davidson had the clothing delivered to the Bureau of Forensic Science in Roanoke.

On March 12, Davidson interviewed Coleman again. Davidson testified that Coleman was still a suspect, but was free to leave if he wished to do so, and was not given Miranda warnings. Davidson told Coleman that he had investigated the mine site and found there was no water there to get his blue jeans wet. Coleman then said when he took a shower at the bathhouse, he probably laid his blue jeans down and water from the shower got them wet. Subsequently, Coleman relinquished another knife to Davidson. Coleman was arrested on April 13.

Over Coleman's objection, the trial court ruled the statements of March 11 and 12 were admissible because Coleman gave them when he was neither under arrest nor in a "custodial interrogation situation" but instead was free to leave; Miranda warnings, therefore, were not required. A portion of one of the statements relating to polygraph examinations was excluded.

On March 13, Davidson testified, he met Coleman "at his in-laws' residence" and asked if he would consent to a search for body fluids and hair. Davidson said Coleman agreed and, after being informed of his constitutional right to insist upon a search warrant, signed a consent authorizing a warrantless search of his body. The consent permitted removal of any property "or body fluids." Davidson testified that Coleman also consented to have samples of body hair taken. Over

Coleman's objection, the trial court ruled, on the basis of Davidson's uncontradicted testimony, that Coleman had consented to a search of his body and that all items taken in the search would be admissible. Davidson stated that samples of Coleman's blood, head hairs, pubic hairs, and saliva were taken and mailed to the Bureau of Forensic Science.

Elmer Gist, Jr., a forensic serologist employed by the Commonwealth of Virginia Bureau of Forensic Science, testified that he made an analysis of the items delivered to him by Dr. Oxley and the investigating officers. He said the two apparently foreign hairs found in Wanda's pubic area were, in fact, not those of the victim but were consistent with pubic hair samples taken from Coleman. Gist concluded that these two hairs came either from Coleman or, by a possible but unlikely coincidence, from some other person of the same race whose hair had the same color, diameter, general configuration, and miscroscopic characteristics.

Gist testified that Coleman was a secretor, one whose "blood type factor" is present "in semen, saliva or other body fluids," and that 80% to 85% of the population are secretors. Gist determined that Coleman had Type B blood, a rare type possessed by only 10% of the population. Wanda's blood was Type O, a type which 40% to 45% of the population have; her husband's was Type A. From Gist's examination of the vaginal specimen taken from the victim's body he found that spermatozoa had been deposited in her vagina by a secretor with Type B blood. He also determined that a bloodstain on Coleman's blue jeans was made by Type O human blood. Gist found blood on one of Coleman's knives but not in sufficient quantity to enable him to determine whether it was human or animal blood. According to Gist, Coleman's blue jeans were dirty and had "blackish stains on the upper legs in particular." Photographs of the victim depicted a very dark, fine substance on her hands.

Charles Crabtree, owner of the Speedy Market, testifie that Coleman came into his store on March 10 about 8:00 p.m. and stayed about ten minutes.

Gary Scott Stiltner testified that on March 10 he was scheduled to work his regular 3:30 to 11:30 shift but had not gone to work. About 10:15 or 10:20 p.m. Coleman came to his trailer in Boyd's Trailer Park, where he and his wife, Sandra, and infant daughter lived, and asked for the return of a tape which Stiltner's wife had borrowed. Upon receiving the tape, Coleman departed.

Sandra K. Stiltner recounted an incident that occurred on Friday, March 6. Shortly after her husband went to work that afternoon, Coleman stopped by her trailer and discussed tapes with her and a neighbor. During a brief interval when they were alone, Coleman asked her what she liked to drink and offered to get her whatever she wanted, but she declined and left to join other neighbors. Sandra Stiltner also testified that when Coleman stopped by for his tape on March 10 she glanced at a clock and noticed that it was 10:20 p.m.

Roger L. Matney, a convicted felon, testified that when he had been incarcerated in the same cell block with Coleman in the county jail, Coleman had described for him the killing and rape of the victim. According to this witness, Coleman drew on a newspaper a diagram of the McCoy house and said he and another man were in the house and after the victim's husband called her about 9:00 p.m., Coleman's companion cut her and she began to scream. Matney believed Coleman said the other man was "Danny Ray."[2] Coleman told Matney the two men took the victim to the bedroom and both raped her. The knife "was supposed" to have been hidden under Black Watch Bridge. Coleman began to say

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[2] The record shows that the trial court, upon affidavit of the Commonwealth Attorney, entered an order on March 11, 1982, under The Uniform Act to Secure the Attendance of Witnesses from without a State in Criminal Proceedings, Code § 19.2-272, et seq. to secure the attendance of Danny Ray Stiltner, of Floyd County, Kentucky, to testify as a witness for the Commonwealth. Stiltner was not called as a witness at trial. It appears from the record that Stiltner, like Coleman, was a brother-in-law of the victim.

something about a paper towel when the conversation ended. (Other evidence of the Commonwealth showed that a paper towel was found near the victim's body).

At the conclusion of the presentation of evidence by the Commonwealth, Coleman moved to strike the evidence as to the charge of capital murder because Matney's testimony showed that Coleman did not inflict the fatal wound. The trial court, concluding that the Commonwealth was not bound by Matney's testimony relating to statements alleged to have been made to him by Coleman, denied the motion.

Elmer T. Miller, a forensic scientist, testifying for the defense, said that from his examination of swabs received from Dr. Oxley he determined that the very dark, fine substance found on the victim's hands was soil and particles of plant material, not coal dust.

Other witnesses for the defense testified to times and places they had seen Coleman on the night of the crimes. Kermit Stiltner said he saw Coleman at the Speedy Market about 8:00 p.m. and talked with him 10 or 15 minutes. Johnny L. Stiltner, a night watchman at T J & M Coal Company, who also regularly drove miners to the mine, saw Coleman in work clothes at Breeding's Store about 9:25 p.m. and told him Coleman had been "laid off" his job which normally began at 9:30. Coleman followed Stiltner to the mine, "got his stuff," and left between 9:30 and 9:45. Ronald G. Perkins, second shift foreman at T J & M Coal Company, saw Coleman about 10:00 p.m. when he came to the mine for his boots and hat. Coleman was wearing blue jeans, which the witness did not think were wet. Philip VanDyke, who worked at another mine, met Coleman at the mouth of Looney's Creek about 10:10. They talked for 10 to 15 minutes and parted company about 10:25 to 10:30. Other evidence established that from the mouth of Looney's Creek it was approximately four miles to the McCoys' neighborhood and eight miles to Boyd's Trailer Park, the McCoy residence being approximately halfway between the two. VanDyke clocked in at his mine across the creek at 10:41. Gary Owens saw Coleman alone

in his truck near the Gary Scott Stiltner trailer between 10:00 and 11:00.

Coleman's wife, Patricia, 17, testified that between 8:00 and 8:30 on March 10 her husband left for work from his grandmother's house where they were living. She did not recall when he came home but he explained that he had returned early because he had been "laid off." The night before the murder, she and Coleman drove to the McCoys' house. Patricia returned some recipes to her sister while Coleman remained in the truck. The Colemans often visited the McCoys and "a couple of times" stayed with Wanda when her husband was at work.

Garnett M. Coleman testified that Coleman was her grandson but she and her husband had adopted him when he was 14 and he had lived with her nearly all his life. According to her, Coleman left to go to work on March 10 about 8:30 and returned about 11:05. She said that she "got mixed up" when she first told one of the investigating officers Coleman came home at 11:30.

Coleman, 23, testified in his own defense. He described the events at Boyd's Trailer Park on March 6. That day, he said, he and David Keller got off work about 6:30 or 7:00 a.m., went to the trailer of Keller's brother, Tom, and spent the day drinking. Several of them went to the Stiltner trailer and in the company of Sandra Stiltner listened to tapes, including one Coleman brought from his truck. After 30 to 45 minutes, Coleman departed, forgetting to take his tape.

Coleman's testimony about his activities on March 10 closely followed the statement he gave to Special Agent Davidson on March 11. Coleman said he left home at 8:30, drove to the Speedy Market, got a box there, talked to Crabtree and Kermit Stiltner, and left about 9:05. He drove to the mouth of Looney's Creek, arriving at 9:10, but his transportation to the mines had already left. He drove on to Breeding's Store, where he found the "man trip" (vehicle used to transport workers to the mines)

stopped. Johnny Stiltner and David Keller were there; Stiltner told Coleman his shift had been laid off. After five or ten minutes Coleman drove back to Grundy but remembering that he had left his mining equipment at the mine, he turned around about 9:25 or 9:30, and drove to the mine site, arriving about 9:45 or 9:50. He talked to Perkins, the second-shift foreman, Johnny Stiltner, and David Keller. Leaving the mine site about 10:00 he met VanDyke on the road. At the mouth of Looney's Creek they talked for 15 or 20 minutes. Coleman said he looked at his watch for the exact time only at 8:30 when he left home and about 9:05 when he left the Speedy Market. All other times to which he testified were estimated.

Coleman said he drove to Boyd's Trailer Park to see Tom Keller but when he discovered the lights were out at Keller's trailer he went to the Stiltner trailer and retrieved the tape he had left there. It was then about 10:40 to 10:45. Coleman drove to the bathhouse in Grundy, arrived about 10:50, showered, left about 11:00, and was at home about 11:05. His pants probably got wet when he threw his work clothes on the floor of the shower. He said the blue jeans he had been wearing that evening were the pants he had worked in the two previous evenings. He acknowledged that on March 11 he told Davidson that he probably got his pants wet at the mines. He conceded that in going from the mouth of Looney's Creek to Boyd's Trailer Park and then to the bathhouse he passed the McCoys' residence, but he denied having stopped there or having murdered or raped Wanda McCoy. He found out about the crimes when Peggy Stiltner, his wife's sister, came to his grandmother's house after midnight.

Coleman denied having made any admission to Matney or any other inmate of the jail. He said he had heard some details

of the crime from his wife's family. He related to inmates what he had learned, that the victim's throat had been cut, she had been stabbed twice, she only had her socks on, and a paper towel had been found. According to Coleman, his uncle, who apparently got the information from Randall Jackson, told him about the towel.

On cross-examination Coleman acknowledged that he knew Bradley McCoy worked the second shift. Later in his testimony, when he was asked how Type O blood got on his blue jeans, he replied that the cat at his house might have scratched someone there, or that someone at the mine the night before might have been cut. Coleman was then shown a picture of the victim depicting blood on her right leg and was asked whether the blood on the left leg of his pants had not actually come from the right leg of the victim. An objection to this question was overruled; Coleman answered in the negative. Coleman said the blood found on one of his knives was from squirrels he had killed in September or October.

Coleman said "[i]t seemed like ... [the officers] came just about every other day, sometimes every day, for three or four days in a row," he was willing to talk with them, and he cooperated because he was "trying to clear" himself "so the police would go on and find who did this."

The Commonwealth called two rebuttal witnesses. Patricia Coleman said she was not aware the cat had scratched anyone in such a fashion as to cause blood to get on her husband's blue jeans; Randall Jackson denied having told Coleman's uncle about a paper towel found at the scene of the crimes.

Shortly before 11:00 p.m. on March 18, 1982, the jury found Coleman guilty of capital murder. On the next morning, Coleman's motion to set aside the verdict on the ground the evidence was insufficient was denied. The sentencing phase of the trial followed promptly.

Brenda F. Rife, 36, testified as a witness for the Commonwealth. She described an attempted rape committed by Coleman on April 7, 1977. On that date, the witness stated, because of flooding several days earlier, electric and telephone services were cut off and all the schools were closed. As she was a school teacher, she remained at home with her six-year-old daughter after her husband left for work that morning. Coleman, whom she had never seen before, was admitted to the house when he asked for a drink of water. After some conversation, Coleman pulled a gun and forced her to tape her daughter's hands and feet and place her in a child's rocking chair. Coleman then walked Mrs. Rife at gunpoint upstairs to the bedroom where he ordered her to undress. When she refused, he ripped open the bathrobe she wore, threw her on the bed, and got on top of her. She struggled, scratched the intruder on the neck, and attempted to dissuade him from his purpose. Seizing an opportunity to escape when Coleman went for his gun, which he had laid down, Mrs. Rife ran downstairs, picked up her daughter, and fled from the house. Coleman ran after them and attempted to pull them back inside but in the ensuing struggle Mrs. Rife seized his weapon, threw it under the porch, and screamed for help. As neighbors came to the rescue, Coleman ran away. The entire episode lasted approximately ten minutes, according to Mrs. Rife, and throughout this time Coleman "never really raised his voice," which she described as "[v]ery cold." She recalled, "It was just like, do it or die."

The Commonwealth introduced a certified copy of Coleman's conviction for the attempted rape of Brenda Rife. He was sentenced to serve three years in the State penitentiary by order entered July 29, 1977, by the Circuit Court of Buchanan County.

The defense called two ministers as witnesses. Thomas F. Bradley, a jail chaplain, visited Coleman six days a week during the period of three months prior to trial when Coleman had been incarcerated in jail in Bristol. Bradley stated that his communications with Coleman were privileged. Contrary to the recommendation of his attorneys, Coleman declined to waive the privilege and asserted that he did not want to appear to be "using the Lord" in any way. The minister testified that he believed Coleman was sincere in his religious convictions.

Michael Trent, minister of Little Prater Church of Christ, had known Coleman since he was about nine years old but had not had "a good connection with him" during the past ten years. He had come to know him personally after Coleman was incarcerated. Coleman decided to be baptized about a month after he was first confined and, at his request, Trent baptized him in jail. Coleman pursued Bible study in jail; Trent believed he was sincere.

Coleman testified again in his own behalf. He said that after the jury found him guilty it made no difference whether the penalty was death or life imprisonment, that "[i]t's up to the Lord now, anyway."

On appeal, Coleman challenges the denial by the trial court of his motion for a change of venue, rulings of the court during the guilt phase of the trial, and the sufficiency of the evidence of his guilt. He has not alleged that errors were committed during the sentencing phase of the trial.

I. Change of Venue.

Coleman filed a pretrial motion for a change of venue. At a hearing on the motion, Coleman presented five newspaper articles appearing in a newspaper of local circulation in Buchanan County to show that there was prejudice against him

in that jurisdiction. The Commonwealth presented numerous affidavits of citizens stating that Coleman could receive a fair trial in Buchanan County. By order entered January 5, 1982, the trial court denied the motion for a change of venue.

Coleman notified the court by letter dated February 15, 1982, that he was not satisfied with his attorneys' efforts to obtain a change of venue, that his uncle was obtaining signatures on a petition stating that Coleman could not receive a fair trial in the county, that a sign at a local gas station in Grundy stated in reference to the case, "Time for another hanging in Grundy," and that he had received threats of death or bodily harm. No petition was ever filed.

It appears from the record that the trial court questioned forty-two prospective jurors, and excused fourteen because they had formed an opinion as to guilt or innocence and eight because they were unwilling to impose the death penalty under any circumstances. Coleman then renewed his motion for a change of venue. The trial court denied the motion but stated that "much leniency" would be granted to Coleman's counsel in proceeding with individual voir dire of each of the twenty prospective jurors remaining. Moreover, the court gave assurances that if the voir dire so justified the court would consider another renewal of the motion. Extensive and searching voir dire was conducted. On motion of Coleman's counsel, the trial court struck for cause and replaced one member of the panel who did not satisfy the court that he fully understood the presumption of innocence to which the defendant was entitled. Coleman's counsel made no other motions to strike for cause and did not renew the motion for a change of venue.

Coleman acknowledges that a motion for a change of venue is addressed to the sound discretion of the trial judge whose action in overruling the motion will not be reversed unless the record shows an abuse of discretion. Coppola v.

Commonwealth, 220 Va. 243, 247, 257 S.E.2d 797, 801 (1979), cert. denied, 444 U.S. 1103 (1980). He also concedes that the burden is on him as the moving party to rebut the presumption that he can receive a fair trial by a local jury in the jurisdiction where the offense occurred. Id. at 248, 257 S.E.2d at 801. Coleman argues, however, that the trial court abused its discretion in denying his motion. This argument is without merit.

We disposed of a similar contention in Clanton v. Commonwealth, 223 Va. 41, 49-50, 286 S.E.2d 172, 176-77 (1982), cert. denied, U.S. ( ), where the factual situation was analogous. Here, as in Clanton, the record fails to show any widespread prejudice against the defendant in the jurisdiction where the crime was committed. The trial court, while exercising commendable caution in excusing any prospective juror whose impartiality appeared to be doubtful, had no unusual or unexpected difficulty in impaneling a jury free from bias. All the jurors who were impaneled assured the court they had formed no opinions as to Coleman's guilt or innocence and would decide the case on the basis of the evidence in accordance with the court's instructions. We hold, therefore, that the trial court did not abuse its discretion in denying Coleman's motion for a change of venue.

II. Admissibility of Evidence.

A. Coleman's statements.

Coleman argues that the statements which he gave to Special Agent Davidson on March 11 and 12, 1981, were given during custodial interrogation when he had not been given the warnings against self-incrimination mandated by Miranda v. Arizona, 384 U.S. 436 (1966), and were, therefore, inadmissible. He relies primarily upon United States v. Gibson, 392 F.2d 373, 376 (4th Cir. 1968), stating that custodial interrogation

"includes all station-house or police-car questioning initiated by the police," and also upon Moore v. Ballone, 658 F.2d 218 (4th Cir. 1981).

We are not persuaded by Gibson or Moore that Coleman was entitled to Miranda warnings. The language quoted above from Gibson is dicta; indeed, that decision held that a suspect who was located in a tavern by a police officer, asked to step outside, and questioned on the sidewalk, was not the subject of custodial interrogation. Thus, although Miranda warnings had not been given, the statement was held to be admissible. In Moore, the statement of a suspect who had been taken to a police station questioned extensively, and told many times that if he talked he could leave, was held to have been given during custodial interrogation and was excluded because no Miranda warnings had been given. The numerous circumstances indicating that the suspect in Moore was in custody are not present in this case.

The Supreme Court has made it clear that the prescribed warnings must be given before statements are taken from suspects only where there is custodial interrogation as thus defined in Miranda: "By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." 384 U.S. at 444 (footnote omitted).

It is the custodial nature rather than the location of the interrogation that triggers the necessity for giving Miranda warnings. See Beckwith v. United States, 425 U.S. 341, 346 (1976). Thus, under certain circumstances police must inform a suspect of his constitutional rights even though he is questioned in his home. See Orozco v. Texas, 394 U.S. 324 (1969). Conversely, the giving of Miranda warnings is not required in every case where a suspect is interrogated at police offices.

See Oregon v. Mathiason, 429 U.S. 492 (1977).

In Mathiason, a suspect came to police offices at an officer's request and was there questioned about and confessed to a burglary. The officer informed the suspect he was not under arrest, but that he was believed to be involved in the burglary. The officer also made the false statement that the suspect's fingerprints had been found at the scene. After a few minutes, the suspect confessed, and the confession, not preceded by Miranda warnings, was held to be admissible. The Supreme Court held that it was clear from the record that the suspect's freedom to leave the police station was not restricted in any significant way. Miranda warnings are not required, the Court held, unless the suspect's freedom has been so restricted as to render him "in custody." 429 U.S. at 495.

In Johnson v. Commonwealth, 208 Va. 740, 160 S.E.2d 793 (1968), cited by Coleman, we held that the defendant was in custody at the sheriff's office when he confessed. Members of his family were denied access to him during various interrogations and his freedom was significantly restricted. 208 Va. at 747, 160 S.E.2d at 798. We held that failure to give the defendant Miranda warnings rendered his confession inadmissible.

The trial court in the present case found that the statements were taken from Coleman during non-custodial interrogation. The evidence supports this finding. Special Agent Davidson testified that Coleman was one of several suspects interviewed at the investigatory stage about the crime. Coleman's statements were exculpatory rather than inculpatory and Coleman was not arrested until a month after he gave the statements. He was asked to cooperate and, as he freely admitted when testifying in his own defense, he did so voluntarily. We hold that the trial court did not err in ruling that Coleman's statements of March 11 and 12, 1981, except for irrelevant matter deleted without objection, were admissible as statements given during non-custodial interrogation.

B. Photographs.

Coleman says the trial court erred in admitting in the guilt phase several photographs of the victim's body which he claims were unduly inflammatory. In particular, he objects to Commonwealth Exhibits 7, 8, 10, and 17. All were color photographs. Exhibit 7 showed the position of the body when it was found. Exhibits 8 and 10 showed the victim's hands with dark stains and blood on them. Exhibit 17 was a photograph, taken by Dr. Oxley at the autopsy room in Roanoke, showing the slashing wound to the victim's neck.

The trial court examined all the photographs proffered by the Commonwealth, excluded three, and, relying on Waye v. Commonwealth, 219 Va. 683, 251 S.E.2d 202, cert. denied, 442 U.S 924 (1979), admitted fourteen, including Exhibits 7, 8, 10, and 17.

The admissibility of photographs is a matter resting within the sound discretion of the trial court. Clanton v. Commonwealth, 223 Va. at 51, 286 S.E.2d at 177; Stamper v. Commonwealth, 220 Va. 260, 270, 257 S.E.2d 808, 816 (1979), cert. denied, 445 U.S. 972 (1980). We reject Coleman's contention that the trial court abused its discretion in admitting any of these photographs.

Exhibit 7 tended to support other evidence that the victim's body had been dragged from the living room through the hallway and into the bedroom. It also corroborated other evidenc that the victim's panties were wrapped around her left ankle. Exhibit 8 showed the victim's left hand resting on the floor. Exhibit 10 showed her right hand in a similar position. There were fresh spots of blood on the floor near her left hand. Both hands, including her fingernails, were discolored, from which a reasonable inference might be drawn that she struggled with her

assailant and got dirt on her hands from his clothing. Exhibit 17 showed the nature and extent of the fatal wound. Dr. Oxley described the measurements of the wound. The photograph itself, however, showing the wound after blood had been wiped away from other parts of the body, was relevant to a determination that the killing was willful, deliberate, and premeditated. Moreover, an autopsy photograph by its very nature is more clinically objective and less bloody than one taken at the scene of a violent crime. That the photographs were harmful to Coleman is undeniable. Much of the Commonwealth's evidence in this case, as in every case, was prejudicial to the defendant. But to be inadmissible, the photographs had to be so inflammatory that they would tend to induce a guilty verdict, regardless of the other evidence in the case.

We do not find that the trial court abused its discretion in admitting the photographs in the guilt trial.

C. Evidence obtained in body search.

Coleman signed a consent to a warrantless search of his body. The consent did not expressly authorize the removal of hair, and Coleman argues that the scope of the search and the ensuing seizure was limited by the language of the authorization. See Lugar v. Commonwealth, 214 Va. 609, 202 S.E.2d 894 (1974). Consequently, he says the trial court erred in admitting body hairs that he alleges were improperly removed from him at the same time body fluids were properly taken. There is no merit in this contention.

The consent form signed by Coleman authorized "a complete search" of his body. Special Agent Davidson testified that he explained to Coleman when the consent was signed what items were sought. Davidson stated that the words "or body fluids" were written on the form before Coleman signed.

Davidson also said he informed Coleman that body hairs were needed and Coleman orally consented to have such hairs removed.

Consent to search may be oral as well as written. See Lowe v. Commonwealth, 218 Va. 670, 239 S.E.2d 112 (1977), cert. denied, 435 U.S. 930 (1978). The trial court, based on Davidson uncontradicted testimony, found that Coleman consented to the search for the items proffered in evidence by the Commonwealth. We agree. The consent authorized seizure of these items, and we hold that the trial court did not err in admitting the products of the search.

III. Cross-examination of Coleman by the Commonwealth Attorney.

Elmer Gist, Jr., the serologist, testified that there was Type O blood on Coleman's blue jeans. He did not specify where on the pants he found the blood. When the blue jeans were offered in evidence, Coleman's objection to their admissibility on the basis of a break in the chain of custody was sustained, and the blue jeans were excluded.

Coleman, asked by his counsel on direct examination whether the pants he wore on the night of the murder were dirty, replied that there was coal dust on them. During extensive cross-examination, the Commonwealth Attorney questioned Coleman as follows:

> Q. Now, sir, I will show you a picture of Wanda Fay Thompson McCoy's legs and it shows blood here on her right leg. Isn't that how blood got on the left leg of your pants, from her leg?
>
> A. No, sir.

Defense counsel objected that there was no evidence as to blood on the left leg of the pants. The Commonwealth Attorney replied that Gist's evidence showed there was Type O blood on the left leg of the pants, and the trial court overruled the objecti

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The questioning continued as follows:

> Q. Isn't that how you got blood on those pants? You were down on her raping her and you got blood on your pants, didn't you?
>
> A. No, sir.
>
> Q. And your left leg came in contact with her right leg?
>
> A. No, sir.

Coleman says the trial court erred in overruling his objection to the Commonwealth Attorney's question based upon an incorrect statement that the evidence showed Type O blood on the left leg of the blue jeans. The Commonwealth Attorney could properly cross-examine Coleman as to matters brought out on direct examination, including the condition of his clothing. The cross-examination could properly focus on the presence of blood on Coleman's blue jeans. Although the Commonwealth Attorney, in responding to Coleman's objection, incorrectly stated there was testimony from Gist that blood was on the left leg of the blue jeans, he could properly ask Coleman if the blood was not on the left leg and if the blood had not come from the victim's right leg during his commission of rape. Coleman answered all the questions in the negative, just as he answered in the negative questions asked on direct examination whether he had committed the crime charged or was present in the McCoy house when Wanda McCoy was murdered.

The trial court did not err in overruling Coleman's objection to the questions. The Commonwealth Attorney's question suggested a possible and reasonable explanation for the presence of human blood on Coleman's pants. Coleman was free to and did deny this and other aspects of the Commonwealth's version of the events which took place on the night of March 10, 1981.

IV. Instruction XIII.

The trial court, over Coleman's objection, gave the jury Instruction XIII which read as follows:

> The Court instructs the jury that:
>
> When the death of the victim occurs in connection with rape, it shall be immaterial in the prosecution thereof whether the alleged rape occurred before or after the death of the victim.

Coleman says the court erred in giving this instruction because there was no evidence whether the victim was dead before or after the alleged rape. Coleman also says the instruction was unnecessary because of Instruction IV. We reject both contentions.

Instruction XIII was based on Code § 18.2-63.1.[3] The trial court gave it because it was "helpful to the jury." Without the instruction, the jury might have been misled. Instruction IV only provided as to the capital murder charged in this case that the Commonwealth must prove beyond a reasonable doubt inter alia that "the killing was of a person during the commission of rape." The jury reasonably could have inferred from the evidence that the victim was murdered first and then raped. Without the guidance of Instruction XIII the jury might have concluded that Coleman could not be found guilty of capital murder if the rape had been committed after the murder. The trial court, therefore, did not err in granting Instruction XIII.

V. Sufficiency of the Evidence.

Coleman moved to set aside the verdict of guilty on the ground that the evidence was insufficient as a matter of law.

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[3] Code § 18.2-63.1 provides:

> When the death of the victim occurs in connection with an offense under this article, it shall be immaterial in the prosecution thereof whether the alleged offense occurred before or after the death of the victim.

to support the verdict. He argues that the Commonwealth's forensic evidence was not unqualified and that, based on other evidence of the Commonwealth showing times and distances, he could not possibly have committed the offenses.

The victim died between 10:00 and 11:00 p.m. As there was no evidence of forced entry into her house, the jury reasonably could infer that she knew her assailant and voluntarily admitted him. Coleman was her brother-in-law, had with his wife visited in the house when the victim's husband was at work, and knew the husband worked the second shift. Two witnesses placed Coleman at Boyd's Trailer Park approximately four miles from the McCoy residence, about 10:20. The McCoys' porch light was still shining around 10:30. McCoy found his wife's body upon returning from work about 11:15. These times were not fixed with scientific precision, but were only estimates believed to be reasonably accurate. In any event, however, they readily disprove Coleman's contention that the Commonwealth's evidence established that he could not have been at the McCoy house when the crimes were committed.

The legs of Coleman's blue jeans were wet for 10 to 12 inches from the bottom; Slate Creek, not more than 100 yards from the victim's house, was 10 to 12 inches deep the morning following the crimes. The jury reasonably could infer that Coleman waded across the creek to and from the McCoy residence.

Roger Matney testified that Coleman confessed that he raped the victim after his companion killed her, and that Coleman mentioned a paper towel. The jury reasonably could have concluded that Coleman alone was with the victim and saw the paper towel at the scene.

The forensic evidence established that the spermatozoa found in the victim's vagina came from a secretor with Type B blood, that Coleman was a secretor with Type B blood, that the

foreign pubic hairs found in the victim's genital area were consistent with Coleman's pubic hair, that the human bloodstain found on Coleman's blue jeans was made by Type O blood, and that the victim's blood was Type O. Blood was also found on one of Coleman's knives, but it could not be classified. The jury reasonably could infer from the evidence that Coleman cut the victim with his knife and raped her either before or after inflicting the fatal blow.

Circumstantial evidence is as competent and is entitle to as much weight as direct evidence, provided it is sufficientl convincing to exclude every reasonable hypothesis except that o guilt. See Stamper v. Commonwealth, 220 Va. at 272, 257 S.E.2d at 817; Turner v. Commonwealth, 218 Va. 141, 145-46, 235 S.E.2d 357, 360 (1977). We hold that the evidence in this case meets the required standard and is, therefore, sufficient.

V. Review of the Death Sentence.

Under Code §§ 19.2-264.2 and 19.2-264.4C,[4] a jury may impose the death sentence upon either of the alternative finding therein provided. In the present case, the trial court, without objection, gave the jury an instruction stating the verdict form specified in Code § 19.2-264.4D. The prosecutors argued to the jury both alternatives, that Coleman would be a continuing

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[4] Code § 19.2-264.4C provides as follows:

> The penalty of death shall not be imposed unless the Commonwealth shall prove beyond a reasonable doubt that there is a probability based upon evidence of the prior history of the defendant or of the circumstances surrounding the commission of the offense of which he is accused that he would commit criminal acts of violence that would constitute a continuing serious threat to society, or that his conduct in committing the offense was outrageously or wantonly vile, horrible or inhuman, in that it involved torture, depravity of mind or aggravated battery to the victim.

serious threat to society, and that his conduct in committing the capital murder was outrageously or wantonly vile. The jury returned a verdict, handwritten in the exact language of the verdict form, fixing Coleman's punishment at death. It is readily apparent that the jury based its sentencing verdict on both statutory alternatives; indeed, Coleman has never contended otherwise. Cf. Quintana v. Commonwealth, 224 Va. 127, 148, 295 S.E.2d 643, 653 (1982), cert. denied, 460 U.S. (1983).

A trial court, pursuant to the provisions of Code § 19.2-264.5, is required to have a probation officer make a thorough investigation of the defendant's history "and any and all other relevant facts." The statute further provides that "[a]fter consideration of the report, and upon good cause shown," the court may set aside the death sentence and impose in lieu thereof a sentence of imprisonment for life. The conviction-order states that the court considered the probation officer's report, that the defendant was given the opportunity to cross-examine the probation officer, and that, upon Coleman's motion, references in the report to juvenile court proceedings in which Coleman was involved were deleted. The court then imposed the death sentence. We find nothing in the record to show that Coleman established good cause for the trial court to set aside the sentence of death.

We are required, under the provisions of Code § 17-110.1C to determine:

> 1. Whether the sentence of death was imposed under the influence of passion, prejudice or any other arbitrary factor; and
>
> 2. Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

As we have demonstrated, the trial court did not abuse its discretion in admitting in evidence photographs showing the

scene of the crimes and the victim's body. These photographs were relevant and probative and we find nothing in the record to indicate that they caused the jurors to act under the influence of passion. The voir dire established that the jurors who were impaneled were not prejudiced against Coleman and were prepared to decide the case on the evidence presented to them. From our careful review of the record, we hold that the verdict of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor.

In determining whether the sentence of death was excessive or disproportionate, we have compared the present case with all other capital murder cases that have been reviewed by this Court. We have given particular emphasis to those cases where the death sentence was based upon both the dangerousness of the defendant and the vileness of the crime.

We have affirmed death sentences imposed upon findings of both dangerousness and vileness in these cases: Smith v. Commonwealth, 219 Va. 455, 248 S.E.2d 135 (1978), cert. denied, 441 U.S. 967 (1979); Mason v. Commonwealth, 219 Va. 1091, 254 S.E.2d 116, cert. denied, 444 U.S. 919 (1979); Stamper v. Commonwealth, 220 Va. 260, 257 S.E.2d 808 (1979), cert. denied, 445 U.S. 972 (1980); Turner v. Commonwealth, 221 Va. 513, 273 S.E.2d 36 (1980), cert. denied, 451 U.S. 1011 (1981); Linwood Earl Briley v. Commonwealth, 221 Va. 532, 273 S.E.2d 48 (1980), cert. denied, 451 U.S. 1031 (1981); James Dyral Briley v. Commonwealth, 221 Va. 563, 273 S.E.2d 57 (1980); Clanton v. Commonwealth, 223 Va. 41, 286 S.E.2d 172 (1982), cert. denied, U.S. ( ); Quintana v. Commonwealth, 224 Va. 127, 295 S.E.2d 643 (1982), cert. denied, 460 U.S. (1983). In Smith, for example, the defendant, who had previously been convicted of rape, confronted his victim alone on a beach, forced her at knife point to disrobe, raped her, choked her, held her head under

water, and stabbed her several times. The facts were somewhat analogous to those in the present case, where the jury found that Coleman, who had previously been convicted of attempted rape, raped his victim, cut her throat, dragged her through her house, and stabbed her twice at or after her death.

From our review of the cases, we hold that the sentence of death imposed upon Coleman was not excessive or disproportionate to sentences generally imposed by Virginia juries in crimes of a similar nature.

We have found no reversible error in the rulings of the trial court, and we have independently determined that the sentence of death was properly imposed. Accordingly, we will not disturb the verdict establishing guilt, we decline to commute the sentence, and we will affirm the judgment of the trial court.

Affirmed.

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 9th day of September, 1983.

Roger Keith Coleman, Appellant,

against Record No. 821816
Circuit Court No. 106-81

Commonwealth of Virginia, Appellee.

Upon an appeal of right from a judgment rendered by the Circuit Court of Buchanan County on the 23rd day of April, 1982.

For reasons stated in writing and filed with the record, the court is of opinion that there is no error in the judgment appealed from. Accordingly, the judgment is affirmed.

It is ordered that the said circuit court allow counsel for the appellant a fee of $550 for services rendered the appellant on this appeal, in addition to counsel's costs and necessary direct out-of-pocket expenses.

This order shall be forthwith certified to the said circuit court.

A Copy,

Teste:

Allen L. Lucy
Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 9th *day of* September, 1983.

Roger Keith Coleman,

Appellant,

against Record No. 821490
Circuit Court No. 108-81

Commonwealth of Virginia,

Appellee.

From the Circuit Court of Buchanan County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the court is of opinion there is no reversible error in the judgment complained of. Accordingly, the court refuses the petition for appeal. Code § 8.01-675.

The said circuit court shall allow court-appointed counsel the fee set forth below and also their necessary direct out-of-pocket expenses. And it is ordered that the Commonwealth recover of the appellant the costs in this court and in the court below.

A Copy,

Teste:

Allen L. Lucy, Clerk

By: Deputy Clerk

Costs due the Commonwealth by appellant in Supreme Court of Virginia:

Attorneys' fee	$400.00 plus their costs and expenses
Filing fee	25.00

Teste:

Allen L. Lucy, Clerk

By: Deputy Clerk

[2-7]

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 14th *day of* October, 1983.

Roger Keith Coleman, Appellant,

against Record No. 821490
Circuit Court No. 108-81

Commonwealth of Virginia, Appellee.

Roger Keith Coleman, Appellant,

against Record No. 821816
Circuit Court No. 106-81

Commonwealth of Virginia, Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgments rendered herein on the 9th day of September, 1983, and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

Allen L. Ivey
Clerk

VIRGINIA: IN THE CIRCUIT COURT OF BUCHANAN COUNTY

COMMONWEALTH OF VIRGINIA,	)	
PLAINTIFF,	)	
V.	)	PETITION
ROGER KEITH COLEMAN,	)	
DEFENDANT.	)	

Comes now the defendant, Roger Keith Coleman, and moves the Court for a change of venue for trial of the charges pending against him in the Circuit Court of Buchanan County, Virginia, and asks that the Court transfer these criminal proceedings to another court of record on grounds that there exists in Buchanan County, Virginia, so great a prejudice against the defendant that he cannot obtain a fair and impartial trial.

This 20th day of October, 1981.

Roger Keith Coleman
ROGER KEITH COLEMAN

Subscribed and sworn to before me, Stephen E. Arey, a Notary Public for the State of Virginia, this 20th day of October, 1981.

Notary Public

My commission exptires August 1, 1984.

AREY & CALDWELL
ATTORNEYS AT LAW
P. O. Box 893
TAZEWELL, Va. 24651

Comm. vs. Roger Keith Coleman
Aug. 2, 1981
Defendant's Ex. #1

THE VIRGINIA MOUNTAINEER

Buchanan County's Family Newspaper Since 1922

Vol. 89, No. 16 ★ ★ Grundy, Virginia 24614 Thursday, April 16, 1981 ★ ★

Brother-in-Law Charged in Death Of Young Housewife

A young Grundy man was arrested Monday night on charges of murdering a 20-year-old housewife five weeks ago. The suspect is a brother-in-law of the victim. News of the arrest has eased tensions which had been growing throughout the community following the brutal stabbing of the young Long Branch woman on March 10.

Officials identified the suspect as Roger Keith Coleman, 22, of the Dove's Branch section of Grundy. He was taken into custody on charges stemming from the March 10 stabbing death of Wanda Fay McCoy. Coleman's arrest came just a few hours after he was indicted by the circuit court grand jury on three counts including capital murder and rape in connection with the slaying of Mrs. McCoy.

A cool suitor, Coleman was taken into custody shortly after 6 p.m. Monday, near Big Rock. He was apprehended by Virginia State Police Special Agent Jack Davidson and Grundy Police Chief Randy Jackson, on a "capias to answer" the indictments handed down earlier in the day.

Chief Jackson said that the accused man was arrested without incident. Coleman was lodged in the Buchanan County Jail without bond pending his obtaining an attorney. A hearing was held in circuit court Tuesday on the matter of legal counsel for the suspect. Further actions were delayed until at least today (Thursday) when a lawyer was expected to be retained by the accused.

The grand jury returned three indictments against Coleman, two for felonies and one on a misdemeanor charge. The indictments include capital murder, rape and indecent exposure.

The indecent exposure charge, a misdemeanor, is not connected with the McCoy slaying but relates to a January 31 incident at the Buchanan County Public Library, according to Chief Jackson.

The capital murder indictment charges that, on March 10, he "... did unlawfully, feloniously, willfully, deliberately, premeditatedly and maliciously kill and murder one Wanda Fay Thompson McCoy during the commission of rape, against the peace and dignity of the Commonwealth of Virginia." The rape indictment charges him with the March 10 rape of Wanda Fay McCoy.

Coleman was also named in an indictment on the misdemeanor charge of indecent exposure. It charged that on January 31, he "... did unlawfully and intentionally make an obscene display of his person in a public place in that he did expose his genitals and posteriorbefore adults in the Buchanan County Public Library while others were present."

Officials explained this week that the capital murder indictment was returned since the murder allegedly took place during the commission of another crime, rape.

Legal officials said that, under Virginia law, the death penalty can be imposed upon a conviction of capital murder.

The body of Wanda Fay McCoy, a 20-year old housewife, was discovered by her husband on the night of March 10. Indications are that she died of stab wounds.

Following the discovery of the body, law enforcement officers conducted an intensive and prolonged investigation which apparently led to the grand jury indictments against Coleman.

Officials indicated at several points during their probe that they were pursuing reports from commissions of evidence connected with the case. It has been indicated that some of these reports were not complete until late last week.

The killing of Mrs. McCoy created an uneasy tension throughout the community. An increased sense of security and personal protection has been noted among many residents in the weeks of her death.

In addition, a number of measures for increased personal safety have been in evidence in the local area during recent weeks.

The case is the first in which a person has been attacked and killed at a Grundy residence in a number of years.

Although handled as a federal explosives violation and not a murder, the last violent killing in Grundy was the car-bombing death of Patricia Stacy in 1978. Curtis Stacy, the victim's husband is now in prison as a result of his conviction for a federal explosives violation in connection with the case.

A few months before the Stacy car bombing, in January, 1975, three people died in a fire at the Dove Hotel in Grundy. The fire, apparently the result of arson, led to a trial of a young Grundy man who was eventually found innocent of the charges.

A number of other violent deaths have occurred in the past several years which were ruled accidents or self-defense.

Perhaps the most memorable slaying in the immediate Grundy area in recent times was the "ax murder" of George Cochran. The killing took place about 10 years ago. Cochran, a night watchman was brutally killed while on duty at the Edith Fay Coal Dock, just east of the town limits. That case remains unsolved.

Roger Keith Coleman
Arrested in Slaying

Murder-Rape Suspect Slashes Wrist

A Grundy man who is awaiting trial for the murder of his sister-in-law, reportedly slashed his wrists while lodged in the Buchanan County jail.

Reliable sources indicate that the incident took place around May 24 and that the suspect, Roger Keith Coleman, of Grundy was treated and released at a local hospital.

Coleman who was taken into custody following his indictment on April 13 is charged with capital murder and rape in connection with the death of his sister-in-law, Wanda Fay McCoy on March 10.

He reportedly used the blade from a disposable razor to cut his wrists. Sources indicate that he called for help almost immediately after the injury and apparently was not severely harmed. Razors of this type are routinely used by prisoners in the jail for shaving.

Earlier reports indicate that about a week before, he had to be taken to a hospital for treatment following an alleged overdose of medication.

Sources indicated that he had apparently saved some tablets over a period of time and managed to take several at once. It was reported that following the pumping of his stomach, he was returned to the jail.

Prior to these two incidents, reports indicate that officials agreed to allow the accused to be baptized. Sources said ministers came to the jail and arrangements were made for a make-shift baptismal tank to be set up inside the jail, where the ceremony was conducted.

No trial date has yet been set for Coleman's case. He was ordered held without bond following his arrest.

Sources also indicate that, in an apparently unrelated incident on Monday night of this week, another inmate at the local jail attempted to cut his wrists.

He was identified as Roger Lester, who is serving a 12-month sentence for petty larceny, managed to cut himself and required treatment at a local hospital.

As was the case with Coleman, Lester's injuries were apparently not serious enough to require his being admitted and he too, was treated and released from the hospital and immediately returned to jail.

[35]

Comm. vs. Roger Keith Coleman
Dec 2, 1981 - Hdg. Ex. # 4

Six Murder Cases Pending in Court; One Set for Friday

Comm. vs. Roger Keith Coleman Hdg. Ex. # 4 Dec. 2, 1981

murder cases including two for
ital murder, are pending in Buch-
County with one scheduled for
in Buchanan Circuit Court this
ay, according to Commonwealth's
rney Mickey McGlothlin. Also
ling on the court docket is the trial
Hibbard Kendrick, long-time fugi-
charged with abduction in an
dent dating back to May, 1978. His
is set for September 23-24.

arged with murder are Robert
ens of Council, Ernie Lester of
s Creek, Ky., Alvis Coleman of
saint, Roger Keith Coleman of
ndy, Bobby Ramey of Vansant and
rman Taylor of Pike County, Ky.

evens' trial is set for this Friday,
gust 14, in circuit court. The 82-year-
Council man will be the third per-
to come to trial for the murder of
lee Harris, 62, of Council who was
t and killed at his home August 14,
0, exactly one year before the
eduled trial date.

wo persons, the victim's estranged
e, Helen Harris, and Bobby Fayne
s of Russell County have been
victed of murder in the Harris
th and are currently serving life
tences.

rial of Ernie Lee Lester of Pike
nty is set for Monday, August 24, in
chanan Circuit Court. Lester is
arged with the murder of 20-year-old
n Brooks Slater, whose body was
nd, shot several times, in a barn
r his residence in the Oakwood
a, last September 10.

The next scheduled murder trial is
at of Alvis Coleman, 40 of the
emaster area, who is charged with
e shotgun slaying of Edgar Allen
ice, 42, of Maydale, at the Coleman
me last November.

Psychiatric examinations are pend-
ing in the case of Roger Keith Coleman,
charged with capital murder in the
stabbing death of his sister-in-law, and
his trial will probably not come up until
next term of court, the common-
wealth's attorney said.

Coleman, 22 of the Dave Branch
section of Grundy, is charged with
capital murder in the death of 19-year-
old Wanda Fay McCoy who was
brutally slain at her Long Bottom home
last March. The capital murder charge
stems from the allegation that the
murder took place during the commis-
sion of another crime rape, officials
said.

A preliminary hearing has not yet
been held in the case of Bobby Gene
Ramey, 36, of Vansant, charged with
the death of his wife, Celia Gayle Com-
pton Ramey, 30, last February 5 at
their home. Ramey is currently in an
in-patient treatment program which
came about as a result of a request by
his attorney for psychiatric evaluation,
McGlothlin said.

Thurman Taylor, 34, of Pike County,
Ky. is currently in Kentucky State
Prison on a detainer. He is charged
with capital murder in the death of
Paul D. "Pat" Matney, 44, also of Pike
County, whose body was found in a
garbage dump on Bull Mountain near
Breaks in mid-June. Matney had been
four dead four or five days before his
body was discovered, authorities said.
His capital murder charge involves
murder and robbery.

Commonwealth's Attorney McGlot'
lin said Coleman and Taylor are t
only individuals to be charged w
capital murder in recent times. Cap
murder is punishable by death un
Virginia law.

[36]

ORDER

Came on the 2nd day of December, 1981, the Attorney for the Commonwealth, Michael G. McGlothlin, and the Defendant, Roger Keith Coleman, who stands indicted by a Grand Jury of this Court for the following felonies, to-wit: Case No. 106-81 (Capital Murder), 107-81 (Indecent Exposure), 108-81 (Rape), and the Defendant was led to the bar in the custody of the Sheriff of Buchanan County; and came also his attorney, Terry L. Jordan, purusant to a Motion for a Change of Venue filed with the Court, in writing, on September 28, 1981, on behalf of the Defendant by his counsel.

In support of said motion defendant introduced in evidence as Defendant's "Exhibits No. 1, 2, 3, 4 and 5", newspaper articles from the Virginia Mountaineer. At the conclusion of the Defendant's evidence, the Attorney for the Commonwealth moved the Court to strike the Defendant's Motion for a Change of Venue on grounds stated in the record, which motion was overruled. Whereupon, the Commonwealth introduced in evidence affidavits in support of its request for a denial of Defendant's Motion for a Change of Venue.

And the Court after duly considering all the evidence and arguments of counsel hereby ADJUDGES and ORDERS that Defendant's Motion for a Change of Venue be, and the same is hereby denied.

Enter this Order this 5th day of January, 1982.

_____, JUDGE

REQUESTED:

_____
Michael G. McGlothlin
Commonwealth Attorney for
Buchanan County, Virginia

THE VIRGINIA MOUNTAINEER

Buchanan County's Family Newspaper Since 1922

Vol. 59, No. 17 ★ ★ Grundy, Virginia 24614 Thursday, April 23, 1981 ★ ★ 2 Sections — 25¢

[34]

Rogan vs Roger Keith Coleman
May 5, 1981
May 6, 1982

Man Accused in Rape-Murder #2
Ordered Held Without Bond

Accused murder Roger Keith Coleman was ordered to be held without bond during a hearing in Circuit Court here last Friday. It was indicated that he will not be brought to trial until at least the July term of court.

Coleman, 22, was indicted last week for the murder and rape of his sister-in-law, Wanda Fay McCoy. He was ordered held without bond on the grounds that his liberty would constitute an unreasonable danger to the public.

Following his appearance last Monday evening, Coleman appeared before Circuit Judge N.E. Perrin Tuesday and it was determined that he should be appointed an attorney.

The accused, along with attorneys Terry Jordan of Grundy and Stephen Arvy of Tazewell, were present for the bond hearing Friday.

Commonwealth's Attorney Michael McGlothlin noted that there was probable cause to believe that Coleman represented a hazard to the public, explaining that Coleman had previously been convicted of attempted rape and, on two occasions, convicted of making obscene telephone calls.

McGlothlin supported his points with testimony from Grundy Police Chief Randy Jacobson and a photograph of the McCoy residence taken during the investigation of the slaying of the 19-year-old housewife.

Coleman's attorneys offered no witnesses during the hearing.

In ruling that Coleman should be held without bond, Judge Perrin said that it was the judgement of the court that, considering the evidence and Coleman's conviction (of attempted rape) along with the severity of the present charges, that he should be held.

The judge then asked whether the lawyers for the two sides were ready to go on with the case, during the present term of court. McGlothlin indicated that the Commonwealth was ready. Arvy however said that he and Jordan were not ready to go on since they had just been appointed to Coleman's defense.

After consulting with their client, Arvy told the court that the defense wished the case to be continued to the July term of court in order to have ample time to prepare for trial.

Coleman was then ordered held in jail until the July term and it was indicated that a trial date would be set later.

Case No. **83-6097**

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1983

ROGER KEITH COLEMAN

Petitioner

v.

COMMONWEALTH OF VIRGINIA

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF VIRGINIA

Motion for Leave to Proceed In Forma Pauperis

Edward M. Wayland, Esq.
Wayland & Williams
801 East High Street
Charlottesville, Virginia 22901
(804) 295-7159

Counsel for Petitioner

MOTION FOR LEAVE TO PROCEED

IN FORMA PAUPERIS

Petitioner, Roger Keith Coleman, by counsel, hereby moves this Court for an Order, issued in accordance with Rule 46 of the Rules of the Supreme Court and 28 U.S.C. §1915, granting him leave to proceed in forma pauperis, with respect to his Petition for a Writ of Certiorari, which Petition is filed herewith, and to all related matters in this Court. In support of this Motion, Petitioner states the following:

1. Petitioner is unable to pay fees, costs or security in connection with his Petition for a Writ of Certiorari. See Affidavit of Roger Keith Coleman, Petitioner, attached hereto.

2. Because of Petitoner's indigency, counsel was appointed to represent Petitioner in connection with his criminal trial in the Circuit Court of Buchanan County, Virginia, and in connection with his appeal of his convictions to the Supreme Court of Virginia.

3. Petitioner seeks a Writ of Certiorari to the Supreme Court of Virginia to obtain review of that Court's action in affirming Petitioner's convictions of capital murder and rape and in affirming the imposition of the sentence of death for these offenses.

Respectfully submitted,

ROGER KEITH COLEMAN
By Counsel

Edward M. Wayland, Esq.
Wayland & Williams
801 East High Street
Charlottesville, Virginia 22901
(804) 295-7159

MAILING CERTIFICATE

I, Edward M. Wayland, a member of the Bar of this Court, make oath that on or before January 14, 1984, I caused this Motion for Leave to Proceed In Forma Pauperis, with the attached affidavit, to be deposited in a United States Post Office or mailbox, with First-Class postage prepaid, and properly addressed to the Clerk of the Supreme Court of the United States, pursuant to Rule 28.2 of the Rules of the Supreme Court. I further make oath that I caused one copy of each of the above-mentioned documents to be sent to Jacqueline G. Epps, Esq., Senior Assistant Attorney General, 101 North 8th Street, Richmond, Virginia 23219, counsel for Respondent, by depositing the same in a United States Post Office or mailbox, with First-Class postage prepaid, on or before January 14, 1984.

Edward M. Wayland

Edward M. Wayland

The foregoing Mailing Certificate was sworn to, subscribed, and acknowledged before me, a Notary Public in and for the Commonwealth of Virginia at Large, this 14th day of January, 1984, by Edward M. Wayland.

Notary Public

My commission expires: August 10, 1984.

No. _____

SUPREME COURT OF THE UNITED STATES

October Term, 1983

ROGER KEITH COLEMAN, Petitioner

v.

COMMONWEALTH OF VIRGINIA, Respondent

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

ROGER KEITH COLEMAN, being duly sworn, deposes and says:

1. I am the Petitioner in the above-entitled cause.

2. I am indigent and unable to pay the fees and costs, or to give security for the fees and costs, associated with the prosecution of the Petition for Writ of Certiorari to the Supreme Court of Virginia in this case.

3. I was certified as an indigent at trial, and attorneys were appointed to represent me at that time.

4. I pursued my appeal to the Supreme Court of Virginia as an indigent with court-appointed counsel.

5. I have been incarcerated since my arrest on these charges, which was on or about April 13, 1981.

6. I am not presently employed, and I have not been employed since before my arrest almost three years ago.

7. I have not received income from any other source in the last twelve months, and I have no cash, bank accounts, or valuable property.

Roger Keith Coleman
ROGER KEITH COLEMAN

State of Virginia
County/City of Mecklenburg, to wit:

The foregoing and attached Affidavit was subscribed, sworn to and acknowledged before me, a Notary Public for the Commonwealth of Virginia at Large, this 20th day of December, 1983.

Notary Public

My commission expires: September 29, 1986.

ORIGINAL

No. 83-6097

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

ROGER KEITH COLEMAN,

Petitioner

v.

COMMONWEALTH OF VIRGINIA,

Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO GRANTING OF A WRIT OF CERRTIORARI

GERALD L. BALILES
Attorney General of Virginia

JACQUELINE G. EPPS
Senior Assistant
Attorney General

Supreme Court Building
101 North 8th Street
Richmond, Virginia 23219

QUESTION PRESENTED

WHETHER THE TRIAL COURT'S ACTION IN REFUSING TO ORDER A CHANGE OF VENUE IN PETITIONER'S TRIAL ON CHARGES OF CAPITAL MURDER AND RAPE DENIED PETITIONER'S RIGHT TO TRIAL BY AN IMPARTIAL JURY IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

ROGER KEITH COLEMAN,

Petitioner

v.

COMMONWEALTH OF VIRGINIA,

Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO GRANTING OF A WRIT OF CERTIORARI

PRELIMINARY STATEMENT

The Commonwealth of Virginia, the respondent herein respectfully prays that a writ of certiorari to the judgment of the Supreme Court of Virginia entered in this case on April 23, 1982, not be granted.

For purposes of uniformity, the parties will hereinafter be referred to as the petitioner and the Commonwealth, and all page references will be to the joint appendix filed in the Supreme Court of Virginia by the petitioner and the Commonwealth and designated (App. ___).

OPINION BELOW

The opinion of the Supreme Court of Virginia affirming the judgment of the Circuit Court for the County of Buchanan was rendered on September 9, 1983, and is reported as 226 Va. ___, 307 S.E.2d 864 (1983).

JURISDICTION

The petitioner asserts that the jurisdiction of this Court is grounded upon 28 U.S.C. § 1257(3)

CONSTITUTIONAL PROVISIONS INVOLVED

Constitutional provisions involved in the instant case are

set forth in the petition for a writ of certiorari.

STATEMENT OF THE CASE

On March 18, 1982, a jury in the Circuit Court of Buchanan County, Virginia, convicted petitioner of capital murder and rape. On that same date, the jury fixed his punishment for rape at confinement in the penitentiary for life, and, on March 19, 1982, imposed the death penalty for capital murder. On April 23, 1982, after considering the post-sentence report, the Circuit Court imposed the death penalty in accordance with the jury verdict. (App. 200-207). Petitioner's petition for a writ of error on the rape conviction was denied by the Supreme Court of Virginia on September 9, 1983. See petition for writ of certiorari at App. 30). Petitioner's conviction for capital murder and the death sentence were affirmed on appeal by the Supreme Court of Virginia on September 9, 1983. Id at App. 29. A petition for a rehearing was denied by the Supreme Court of Virginia on October 14, 1983. Id. at App. 31.

Wanda Fay McCoy, a resident of Grundy, Virginia, was last seen alive by her husband on the morning of March 10, 1981. When he returned home from work that evening he found his wife in the bedroom on the floor with her throat slashed and two stab wounds in the chest. (App. 599-601).

An intense investigation was undertaken by the local law enforcement authorities and evidence linking petitioner to the crime consisted of semen found in the vaginal cavity of the decedent which was the same type as defendant's secretion type. (App. 759). The petitioner, on the night of the crime, wore jeans which had blood stains of the same type as the decedent's blood type. (App. 775-176). Two hairs were found in the pubic area of the victim which was consistent with those of the petitioner. (App. 758). A cell mate of the petitioner at the local county jail testified that the petitioner admitted to him that he was present when the victim was killed and that he raped her, although he did not actually kill her, (App. 855-857). The defendant was the victim's brother-in-law (App. 925), and the evidence indicated that she was killed by someone she knew since

there was no forced entry into the residence. (App. 513).

The petitioner was arrested on April 13, 1981, more than a month following the crime. On October 20, 1981, the petitioner filed a motion for a change of venue See Petition for Writ of Certiorari, App. at 32 . On December 2, 1981, a hearing was held before the Court in which petitioner introduced five newspaper articles from The Virginia Mountaineer in support of his motion for a change of venue, (App. 120). The Commonwealth introduced affidavits supporting their contention that petitioner could receive a fair and impartial trial in that jurisdiction, App. 120). The motion was denied by the Court by order dated January 5, 1982, (App. 120). Evidence regarding a sign that appeared at a service station in Grundy sometime in early 1982, was not offered by way of sworn testimony or affidavit on the issue of change of venue. This statement appeared in a letter which was written by petitioner to the trial court judge dated February 15, 1982. (App. 123-125).

The motion for a change of venue was renewed at the beginning of petitioner's trial on March 15, 1982, and denied (App. 246-250). Although the Court again denied the motion, it stated that it would grant the petitioner much leniency to go through with the individual voir dire of every jury on the panel of 20. Moreover, the Court gave assurances that if the voir dire so justified the Court would consider another renewal of the motion. (App. 250). Extensive voir dire was conducted, and counsel for the petitioner moved the Court to strike one juror for cause which was done on the basis that the juror did not fully understand the presumption of innocence. (App. 278-80). Counsel for petitioner made no other motions to strike for cause and did not renew the motion for a change of venue.

REASONS FOR DENYING THE WRIT

THE TRIAL COURT'S ACTION IN REFUSING TO ORDER A CHANGE OF VENUE OF PETITIONER'S TRIAL DID NOT DENY THE PETITIONER HIS RIGHT TO A FAIR AND IMPARTIAL JURY AND THIS CASE PRESENTS NO SPECIAL OR IMPORTANT REASONS FOR GRANTING A WRIT OF CERTIORARI.

Petitioner argues that the Court should have granted his motion for a change of venue because "there can be no question in

the present case that the community atmosphere in Buchanan County, Virginia, was inflamed with anger and outrage directed at the petitioner." (See Ppetition for Certiorari at 5). He bases his assertion on five articles that appeared in a local newspaper related to these charges as well as an unrelated charge of indecent exposure and prior convictions of the petitioner; a large sign purportedly posted at one of the town's service stations which read, "Time for Another Hanging in Grundy;" alleged threats against petitioner which caused the trial judge to have petitioner held in a neighboring community jail; and the actions of the trial judge in ordering spectator search and personally searching the jury room before permitting the jury to retire there.

The constitutional standard of fairness requires that a defendant have "a panel of impartial, 'indifferent' jurors." Irvin v. Dowd, 366 U.S. 717, 722 (1961). However, qualified jurors need not be totally ignorant of the facts and issues involved in a case:

> In these days of swift widespread and diverse methods of communication, an important case can be expected to arouse the interest of the public in the vicinity, and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case. This is particularly true in criminal cases. To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard

366 U.S. at 722, 723

However, a juror's assurances that he is impartial cannot be dispositive of the rights of the accused where the accused can demonstrate the actual existence of an opinion in the mind of the juror as will raise the presumption of partiality. Murphy v. Florida, 421 U.S. 794 (1975).

Petitioner concedes that the record does not reflect any actual bias on the part of any of the jurors who were seated, (See Petition for a Writ of Certiorari at 6). However, such indicia of impartiality can be disregarded in a case where the general atmosphere in the community is sufficiently

inflammatory. The circumstances of this case do not fall in that category despite petitioner's attempts to characterize them as such by referring to newspaper articles, threats against the petitioner and a sign at a local gas station stating it was "time for another hanging in Grundy." Petitioner presented five newspaper articles at trial and presents four in this petition (Petition for Writ of Certiorari App. at 33-36). One article was written on April 16, 1981, April 23, 1981, one appears to have been written during the week of August 14, 1981, and there is nothing in the fourth to indicate the date it was written. Petitioner was not tried until March, 1982 and the articles were largely factual in nature. Pre-trial publicity was never intensive, extensive, or inflammatory, and most of the publicity that did occur occurred approximately 7 months prior to trial. Beck v. Washington, 369 U.S. 541 (1962), reh. den. 370 U.S. 965 (1962).

Another factor in determining whether pervasive prejudice exists in a community is a number of veniremen who will admit to a disqualifying prejudice. When you have a case in which most of the veniremen will admit to prejudice, the reliability of the others denials of such prejudice may be drawn into question. It is more probable that they are part of a deeply hostile community. Murphy v. Florida, at 803.

In Irvin v. Dowd, the Court noted that 90 percent of those examined on the point were inclined to believe that the accused was guilty and that the Court had excused for this cause 268 of the 430 veniremen. 366 U.S. at 727. In Murphy v. Florida, supra, 20 of the 78 people questioned were excused because they indicated an opinion as to petitioner's guilt. 421 U.S. at 803. In distinguishing Murphy from Irvin, this Court stated "This may indeed be 20 more than would occur in the trial of a totally obscure person, but it by no means suggests a community with sentiments so poisoned against the petitioner as to impeach the indifference of jurors who displayed no animus of their own" 421 U.S. at 803. Again, in Dobbert v. Florida, 432 U.S. 282 (1977), the Court refused to presume pervasive prejudice where 78

prospective jurors were interviewed and petitioner exercised only 27 of his 32 peremptory challenges. Id. at 302.

In this case, of 42 prospective jurors, the trial court excused 14 because they had formed an opinion as to guilt or innocence and 8 because they were unwilling to impose the death penalty under any circumstances (Petition for Writ of Certiorari App. at 15). This can hardly be said to reflect inherent prejudice against the petitioner. Extensive knowledge in the community of either the crimes or the putative criminal is not sufficient by itself to render a trial constitutionally unfair. Murphy v. Florida, supra.

In support of his position, petitioner relies principally upon Irving v. Dowd, supra; Rideau v. Louisiana, 373 U.S. 723 (1963); and Sheppard v. Maxwell, 384 U.S. 333 (1966. Under the circumstances in each of these cases, prejudice was presumed and the state convictions were overturned by this Court because they were obtained in a trial atmosphere that "had been utterly corrupted by press coverage" Murphy v. Florida supra.

In Irvin, the rural community in which the trial was held had been subjected to an extreme amount of inflammatory publicity immediately prior to trial including defendant's confession to 24 burglaries and 6 murderers, which included the one for which he was tried, and his unaccepted offer to plead guilty in order to avoid the death sentence. Eight of the twelve jurors that sat in his case had actually formed an opinion that he was guilty before the trial began. In Rideau the defendant confessed under police interrogation to the murder with which he was charged. A twenty minute film of his confession was broadcast three times by a television station in the community where the crime had been committed. Similarly, Sheppard arose from a trial infected not only by a background of extremely inflammatory publicity, but also to a carnival atmosphere during the trial. In reversing conviction in Rideau, the Court did not examine the voir dire for evidence of actual prejudice, because it considered the trial under review "but a hollow formality" in view of the thousands of people who had seen and heard defendant admit his guilt before

cameras. Id. at 326.

The cases relied upon by the petitioner "cannot be made to stand for the proposition that juror exposure to information about a state defendant's prior convictions or to news accounts of the crime with which he is charged alone presumptively deprives the defendant of due process." Murphy v. Florida, at 799.

In order for a state court conviction to be overturned in cases of this nature, the petitioner must show by a totality of the circumstances that his state court conviction was obtained in a trial atmosphere that had been "utterly corrupted by press coverage." Murphy v. Florida, at 798; Dobbert v. Florida, at 303. Petitioner in this case has failed to show extensive publicity of an inflammatory nature. He has directed us to no specific portions of the record particularly the voir dire examination of the jurors, which would require a finding of constitutional unfairness as to the method of jury selection or as to the character of the jurors actually selected.

Petitioner alleges that the Virginia Supreme Court failed to inquire whether the inflammatory community context within which the trial took place required a change of venue. The Commonwealth disagrees. The Court specifically held that "the record fails to show any widespread prejudice against the defendant in the jurisdiction where the crime was committed (Petition for Writ of Certiorari App. at 16). Moreover, the Supreme Court of Virginia did not decide this issue in a way that would conflict with the decision of another state court of last resort, a federal court of appeals or the decisions of this Court.

CONCLUSION

For the reasons presented by the Commonwealth of Virginia, the respondent herein respectively contends that the issues raised in this case are neither important nor substantial and that this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA

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CERTIFICATE OF SERVICE

I hereby certify that I, Jacqueline G. Epps, Senior Assistawnt Attorney General of Virginia am a member of the bar of this Court and that on the 15TH day of February,1984, mailed with first class postage pre-paid. three copies of the foregoing respondent's brief in opposition to granting a writ of certiorari to Edward M. Wayland, Esquire, Wayland & Williams, 801 East High Street, Charlottesville, Virginia 22901, counsel for the petitioner.

Jacqueline G. Epps
Senior Assistant
Attorney General

MAILING CERTIFICATE

I, Jacqueline G. Epps, a member of the bar of this Court, make oath that on the 15th day of February, 1984, I deposited this Brief in Opposition to Petition for Writ of Certiorari in a United States Post Office or mailbox, with first-class postage prepaid, and properly addressed to the Clerk of the Supreme Court of the United States.

Jacqueline G. Epps

STATE OF VIRGINIA,
City of Richmond, to-wit:

The foregoing mailing Certificate was subscribed and sworn to before me, a Notary Public, this 15th day of February, 1984.

Notary Public

My commission expires: 9.14.87